### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

10:00 AM

8:21-10760 Christopher Thomas Avery and Heather Ann Avery

Chapter 7

#1.00

Motion for relief from stay [Personal Property]

Ford Motor Credit Company, LLC vs. DEBTORS (Motion filed 4/9/02021)

[RE: 2018 Ford Ecosport - VIN No.: MAJ6P1UL6JC183538]

Docket 9

### **Tentative Ruling:**

Tentative for 5/5/21:

Grant pursuant to § 362(d)(1) and § 362(d)(2) with 4001 waiver.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Movant will be so notified.

The courtroom will be locked; parties wishing to make an appearance must do so by Zoom for Government, a free service that provides audioconference capabilities, using the following information.

Audioconference Tel. No.: +1 (669) 254 5252 or +1 (646) 828 7666

Meeting ID: 160 524 6045

Password: 656311

Parties making telephonic appearances are reminded to have all relevant filings/information easily accessible during the hearing.

Movant to lodge an order within seven (7) days.

#### **Party Information**

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room

10:00 AM

**CONT...** Christopher Thomas Avery and Heather Ann Avery

Chapter 7

**5**C

**Debtor(s):** 

Christopher Thomas Avery Represented By

Heather J Canning

**Joint Debtor(s):** 

Heather Ann Avery Represented By

Heather J Canning

**Trustee(s):** 

Jeffrey I Golden (TR) Pro Se

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

10:00 AM

8:18-10548 Lenore LuAnn Albert-Sheridan

Chapter 7

Adv#: 8:18-01065 Albert-Sheridan v. Farfan et al

#1.10

Hearing RE: Debtor's Third Ex Parte Application For T.R.O. And Preliminary Injunction, Filed May 3, 2021 (Set per Order Entered 5/3/21)

Docket 86

### **Tentative Ruling:**

Tentative for 5/5/21:

Virtual appearances are required. The courtroom will be locked; parties will not be permitted to appear in the courtroom. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities.

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Videoconference URL: https://cacb.zoomgov.com/j/1605246045

Meeting ID: 160 524 6045

Password: 656311

If a participant is unable to send and receive audio through his/her computer, or join the videoconference through an Internet browser for any reason, the audio of the hearing may be accessed by telephone using the following audio conference information:

Audioconference Tel. No.: +1 (669) 254 5252 or +1 (646) 828 7666

Meeting ID: 160 524 6045

5/4/2021 8:44:39 AM

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

10:00 AM

**CONT...** Lenore LuAnn Albert-Sheridan

Chapter 7

Password:

For further details, please consult the instructions on the Court's website https://www.cacb.uscourts.gov/judges/honorable-scott-c-clarkson.

656311

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#### **Party Information**

#### **Debtor(s):**

Lenore LuAnn Albert-Sheridan Pro Se

**Defendant(s):** 

Maricruz Farfan Represented By

Suzanne C Grandt James J Chang

Brandon Tady Represented By

Suzanne C Grandt James J Chang

Alex Hackert Represented By

Suzanne C Grandt James J Chang

Paul Bernardino Represented By

Suzanne C Grandt James J Chang

Yvette Roland Hon. Represented By

5/4/2021 8:44:39 AM

Page 4 of 59

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room 5C

10:00 AM

CONT... Lenore LuAnn Albert-Sheridan Chapter 7

Suzanne C Grandt James J Chang

State Bar Of California Represented By

Suzanne C Grandt James J Chang

Timothy Byer, Esq Represented By

James J Chang Suzanne C Grandt

Nira Woods Pro Se

Devin Lucas, Esq Pro Se

Movant(s):

Lenore LuAnn Albert-Sheridan Pro Se

**Plaintiff(s):** 

Lenore LuAnn Albert-Sheridan Pro Se

**Trustee(s):** 

Jeffrey I Golden (TR)

Represented By

Jonathan A. Michaels

Eric P Israel
Aaron E DE Leest

Sonia Singh

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

8:17-13506 John Richard Garcia

Chapter 7

#2.00

Hearing RE: Chapter 7 Trustee's Motion For Order Approving Procedures For Overbids And Right Of First Refusal (Motion filed 4/13/2021)

Docket 49

#### **Tentative Ruling:**

Tentative for 5/5/21 is to GRANT.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Movant will be so notified.

The courtroom will be locked; parties wishing to make an appearance must do so by Zoom for Government, a free service that provides audioconference capabilities, using the following information.

Audioconference Tel. No.: +1 (669) 254 5252 or +1 (646) 828 7666

Meeting ID: 160 314 4163

Password: 593981

Parties making telephonic appearances are reminded to have all relevant filings/information easily accessible during the hearing.

Movant to lodge an order within seven (7) days.

# **Party Information**

#### **Debtor(s):**

John Richard Garcia

Represented By Raymond J Bulaon

5/4/2021 8:44:39 AM

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room 5C

11:00 AM

CONT... John Richard Garcia Chapter 7

**Trustee(s):** 

Weneta M.A. Kosmala (TR) Represented By

Reem J Bello Jeffrey I Golden Erin P Moriarty

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

8:18-10516 Automotive Funding Group, Inc.

Chapter 7

#3.00

Hearing RE: Trustee's Final Report And Applications For Compensation And Reimbursement Of Expenses (Final Report filed 3/26/2021)

[RE: KAREN SUE NAYLOR - Chapter 7 Trustee]

[Fees: \$56,498.41; Expenses: \$872.50]

[RE: RINGSTAD & SANDERS LLP - Attorneys For Chapter 7 Trustee]

[Fees: \$232,306.00; Expenses: \$1,604.58]

[RE: HAHN FIFE & COMPANY - Accountants For Chapter 7 Trustee]

[Fees: \$12,109.00; Expenses: \$613.30]

Docket 102

#### **Tentative Ruling:**

Tentative for 5/5/21 is to APPROVE.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Movant will be so notified.

The courtroom will be locked; parties wishing to make an appearance must do so by Zoom for Government, a free service that provides audioconference capabilities, using the following information.

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### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

**CONT...** Automotive Funding Group, Inc.

Chapter 7

Parties making telephonic appearances are reminded to have all relevant filings/information easily accessible during the hearing.

Movant to lodge an order within seven (7) days.

# **Party Information**

**Debtor(s):** 

Automotive Funding Group, Inc. Represented By

Richard H Golubow

**Trustee(s):** 

Karen S Naylor (TR) Represented By

Nanette D Sanders

### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

8:19-14348 Alisandro Romero

Chapter 7

#4.00

Hearing RE: Trustee's Final Report And Applications For Compensation And Reimbursement Of Expenses (Trustee's Report filed 3/29/2021)

[RE: KAREN SUE NAYLOR - Chapter 7 Trustee]

[Fees: \$4,758.24; Expenses: \$289.75]

[RE: RINGSTAD & SANDERS LLP - Attorneys For Chapter 7 Trustee]

[Fees: \$9,840.00; Expenses: \$244.85]

[RE: HAHN FIFE & COMPANY, LLP - Accountants For Chapter 7 Trustee]

[Fees: \$1,000.00; Expenses: \$0.00]

Docket 73

#### **Tentative Ruling:**

Tentative for 5/5/21 is to APPROVE.

The Court has received and reviewed the Opposition filed 4/22/21 [Dk. 77], and finds that it is not well-taken, as it provides insufficient and unsupported grounds to deny the Trustee's Final Report.

Virtual appearances are required. The courtroom will be locked; parties will not be permitted to appear in the courtroom. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities.

Participants may connect to the videoconference through an Internet browser by entering the Videoconference URL shown below, as well as the meeting ID and password, when prompted.

Videoconference URL: https://cacb.zoomgov.com/j/1603144163

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

**CONT...** Alisandro Romero

Chapter 7

Meeting ID: 160 314 4163

Password: 593981

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Meeting ID: 160 314 4163

Password: 593981

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#### **Party Information**

#### **Debtor(s):**

Alisandro Romero Represented By

Rex Tran
Thomas J Polis

**Trustee(s):** 

Karen S Naylor (TR)

Represented By

Nanette D Sanders

Page 11 of 59

5/4/2021 8:44:39 AM

Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room 5C

11:00 AM

CONT... Alisandro Romero Chapter 7

### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

**8:20-11056** Mershad Javan

Chapter 7

#5.00

CONT'D Hearing RE: Amended Motion For Order Disallowing Proof Of Claim: (Motion filed 5/15/2020)

(Amended Motion filed 3/15/2021)

(Case reassigned from CB on 7/31/2020)

Claim No. 1 James Gubersky \$90,000.00

FR: 7-2-20; 9-29-20; 1-20-21; 2-4-21; 2-18-21

Docket 286

#### **Tentative Ruling:**

Tentative for 5/5/21:

Parties should be prepared to discuss the impact of consolidating this claim objection with related adversary proceeding, Adv. No. 21-01010.

Virtual appearances are required. The courtroom will be locked; parties will not be permitted to appear in the courtroom. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities.

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Meeting ID: 160 314 4163

Password: 593981

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# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

### **CONT...** Mershad Javan

Chapter 7

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Meeting ID: 160 314 4163

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*******************
Tentative for 2/4/21:
Virtual appearances are required.
**********************
Tentative for 1/20/21:

This matter is CONTINUED to February 4, 2021, at 9:30 a.m. to be heard concurrently with Debtor's Motion to Convert filed 1/13/21 [Dk. 238].

The 1/20 hearing is hereby vacated, and will not be held; therefore, no appearances are permitted.

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

CONT... Mershad Javan Chapter 7

**Party Information** 

**Debtor(s):** 

Mershad Javan Represented By

Leslie A Cohen

Movant(s):

Mershad Javan Represented By

Leslie A Cohen Leslie A Cohen Leslie A Cohen Leslie A Cohen

**Trustee(s):** 

Richard A Marshack (TR)

Represented By

D Edward Hays David Brian Lally Laila Masud

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

**8:20-11056** Mershad Javan

Chapter 7

#6.00

CONT'D Hearing RE: Amended Motion For Order Disallowing Proof of Claim (Motion filed 5/14/2020)

(Amended Motion filed 3/15/2021)

(Case reassigned from CB on 7/31/2020)

Claim No. 2 Steven Norris \$2,375,000.00

FR: 1-20-21; 2-4-21; 2-18-21

Docket 288

#### **Tentative Ruling:**

Tentative for 5/5/21:

Parties should be prepared to discuss the impact of consolidating this claim objection with related adversary proceeding, Adv. No. 20-01085.

Virtual appearances are required. The courtroom will be locked; parties will not be permitted to appear in the courtroom. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities.

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Password: 593981

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### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

#### **CONT...** Mershad Javan

Chapter 7

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Meeting ID: 160 314 4163

Password: 593981

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*******************	
Tentative for 2/4/21:	
Virtual appearances are required.	
**********************	
Tentative for 1/20/21:	

This matter is CONTINUED to February 4, 2021, at 9:30 a.m. to be heard concurrently with Debtor's Motion to Convert filed 1/13/21 [Dk. 238].

The 1/20 hearing is hereby vacated, and will not be held; therefore, no appearances are permitted.

#### Party Information

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room 5C

11:00 AM

CONT... Mershad Javan Chapter 7

**Debtor(s):** 

Mershad Javan Represented By

Leslie A Cohen

Movant(s):

Mershad Javan Represented By

Leslie A Cohen Leslie A Cohen Leslie A Cohen Leslie A Cohen

**Trustee(s):** 

Richard A Marshack (TR)

Represented By

D Edward Hays David Brian Lally Laila Masud

### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

**8:20-11056** Mershad Javan

Chapter 7

**#7.00** 

Hearing RE: Amended Motion For Order Disallowing Proof of Claim:

(Motion filed 5/12/20)

(Amended Motion filed 3/15/2021)

(Case reassigned from CB on 7/31/2020)

Claim No. 3 Steve Norris \$2,400,000.00

FR: 7/2/20; 7/29/20; 1-20-21

Docket 16

#### **Tentative Ruling:**

Tentative for 5/5/21:

Parties should be prepared to discuss the impact of consolidating this claim objection with related adversary proceeding, Adv. No. 20-01085.

Virtual appearances are required. The courtroom will be locked; parties will not be permitted to appear in the courtroom. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities.

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Meeting ID: 160 314 4163

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### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

#### **CONT...** Mershad Javan

Chapter 7

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\*

Tentative for 1/20/21:

This matter is CONTINUED to February 4, 2021, at 9:30 a.m. to be heard concurrently with the Debtor's Motion to Convert filed 1/13/21 [Dk. 238].

The 1/20 hearing is hereby vacated, and will not be held; therefore, no appearances are permitted.

#### **Party Information**

#### **Debtor(s):**

Mershad Javan

Represented By Leslie A Cohen

5/4/2021 8:44:39 AM

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room 5C

11:00 AM

CONT... Mershad Javan Chapter 7

Movant(s):

Mershad Javan Represented By

Leslie A Cohen Leslie A Cohen Leslie A Cohen Leslie A Cohen

**Trustee(s):** 

Richard A Marshack (TR)

Represented By

D Edward Hays David Brian Lally

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

**8:20-11056** Mershad Javan

Chapter 7

Adv#: 8:21-01010 Gubersky v. Javan

**#7.10** 

CONT'D Hearing RE: Motion To Dismiss Adversary Proceeding And "Complaint To Determine Dischargeability Of Debt 11 U.S.C. Sections 523(a)(6)" (Motion filed 3/19/2021)

FR: advanced from 5-5-21 at 1:30 p.m.

Docket 5

### **Tentative Ruling:**

Tentative for 5/5/21 is to DENY.

Plaintiff, a former employee of Defendant's business, seeks a determination of dischargeability of debt pursuant to §523(a)(6), alleging that Defendant engaged in willful and malicious conduct when he terminated Plaintiff from the business after Plaintiff raised questions about the legality of the operations of the business, and Defendant's involvement therein.

Defendant has filed the present motion to dismiss arguing the following: (1) that Plaintiff may not plead a cause of action related to "whistleblower" claims against Defendant in his individual capacity, as such claims against individuals are prohibited under California law; (2) that Plaintiff has not alleged sufficient facts to establish a claim under FRCP 12(b); and (3) that the amended complaint is unintelligible and makes bad faith, false assertions of fact.

To survive a FRCP 12(b)(6) motion to dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This standard requires the plaintiff to allege facts that add up to "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Id*.

### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

#### **CONT...** Mershad Javan

Chapter 7

Under §523(a)(6), Plaintiff must allege facts supporting the following three elements: (1) Defendant's conduct was willful; (2) Defendant's conduct was malicious; and (3) Defendant caused injury. *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1143 (9th Cir. 2002).

Despite Plaintiff's contention otherwise, the Court is not persuaded that California statutorily bars this Court from making a dischargeability determination to Defendant individually, simply based on the fact that Debtor's alleged wrongful conduct relates to the wrongful termination of an employee from Debtor's business. The Court finds the complaint fundamentally sufficient, as it provides plausible facts related to each required element of the §523(a)(6) claim.

With respect to Defendant's argument that the complaint is unintelligible, while the Court acknowledges that the complaint may benefit from revision toward concision, and to eliminate grammar and syntax errors, the Court understands the allegations contained in the complaint.

Therefore, the Court is inclined to DENY the motion to dismiss.

Virtual appearances are required. The courtroom will be locked; parties will not be permitted to appear in the courtroom. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities.

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Password: 593981

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# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

#### **CONT...** Mershad Javan

Chapter 7

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### **Party Information**

**Debtor(s):** 

Mershad Javan Represented By

Leslie A Cohen

**Defendant(s):** 

Mershad Javan Represented By

Leslie A Cohen

Plaintiff(s):

James Gubersky Represented By

David Brian Lally

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hear

**Hearing Room** 

**5**C

11:00 AM

**CONT...** Mershad Javan

Chapter 7

**Trustee(s):** 

Richard A Marshack (TR)

Represented By
D Edward Hays
David Brian Lally
Laila Masud

### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

**8:20-11056** Mershad Javan

Chapter 7

Adv#: 8:21-01010 Gubersky v. Javan

**#7.20** 

CONT'D STATUS CONFERENCE RE: Adversary Complaint To Determine Dischargeability Of Debt (Complaint filed 2/16/2021)

FR: advanced from 5-5-21 at 1:30 p.m.

Docket 1

### **Tentative Ruling:**

Tentative for 5/5/21:

Pursuant to the proposed tentative in related matter #7.1, the Court is inclined to set the following dates/deadlines:

- 1. Deadline to file answer: June 4, 2021.
- 2. Discovery cutoff: November 5, 2021. Note: this is the date by which all discovery motions must be heard and resolved.
- 3. Motion cutoff: December 17, 2021. Note: this is the date by which all non-discovery motions must be heard and resolved.
- 4. Pretrial conference: February 2, 2022, at 11:00 a.m.

The parties are specifically advised to cooperate and follow all local and federal rules. The failure to do so may subject the offending party to monetary and/or non-monetary sanctions, including the striking of the answer or dismissal of the complaint.

Plaintiff is to lodge a scheduling order within seven (7) days.

Virtual appearances are required. The courtroom will be locked; parties will

### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

### **CONT...** Mershad Javan

Chapter 7

not be permitted to appear in the courtroom. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities.

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Password: 593981

For further details, please consult the instructions on the Court's website https://www.cacb.uscourts.gov/judges/honorable-scott-c-clarkson.

Please note that default matters may be called prior to the videoconference, so there may be a slight delay to the official start time of the videoconference hearing.

As noted in the Court's Zoom Video Hearing Guide, located at https://www.cacb.uscourts.gov/node/7890, all persons are strictly prohibited from making any recording of court proceedings, whether by video, audio, "screenshot," or otherwise. Violation of this prohibition may result in the imposition of monetary and non-monetary sanctions.

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

CONT... Mershad Javan Chapter 7

**Party Information** 

**Debtor(s):** 

Mershad Javan Represented By

Leslie A Cohen

**Defendant(s):** 

Mershad Javan Pro Se

**Plaintiff(s):** 

James Gubersky Represented By

David Brian Lally

**Trustee(s):** 

Richard A Marshack (TR)

Represented By

D Edward Hays David Brian Lally Laila Masud

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

11:00 AM

8:20-11643 James A. Trent

Chapter 7

#8.00

CONT'D Hearing RE: Amended Chapter 7 Trustee's Motion For Turnover Of Property Of The Estate And Objection To Debtor's Claim Of Exemption (Amended motion filed 1/19/2021)

FR: 2-3-21; 3-3-21

Docket 108

### **Tentative Ruling:**

Tentative for 5/5/21 is to GRANT.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Movant will be so notified.

The courtroom will be locked; parties wishing to make an appearance must do so by Zoom for Government, a free service that provides audioconference capabilities, using the following information.

Audioconference Tel. No.: +1 (669) 254 5252 or +1 (646) 828 7666

Meeting ID: 160 314 4163

Password: 593981

Parties making telephonic appearances are reminded to have all relevant filings/information easily accessible during the hearing.

Movant to lodge an order within seven (7) days.

#### **Party Information**

#### **Debtor(s):**

James A. Trent

Represented By

5/4/2021 8:44:39 AM

Page 29 of 59

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room

11:00 AM

CONT... James A. Trent Chapter 7

Christine A Kingston

**5**C

Movant(s):

Weneta M.A. Kosmala (TR) Represented By

Reem J Bello Ryan W Beall

**Trustee(s):** 

Weneta M.A. Kosmala (TR) Represented By

Reem J Bello Ryan W Beall

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1	1	:0	0	AM

### 8:20-11885 Todd Stuart Masler

Chapter 7

#9.00

Hearing RE: Sherri Siegel-Masler's Objections To Proof Of Claims: (Motion filed 3/31/2021)

Claim No.: 1	Capital One	\$8,353.54
Claim No. 2	Bank Of America	\$3,355.86
Claim No. 3	Wells Fargo	\$8,517.69
Claim No. 4	Wells Fargo	\$3,858.69
Claim No. 5	Wells Fargo	\$10,509.80
Claim No. 6	Wells Fargo	\$2,679.74
	Docket 72	

### **Tentative Ruling:**

Tentative for 5/5/21:

This matter is CONTINUED to July 14, 2021, at 11:00 a.m., in light of the recently filed amendments to various proofs of claims at issue, and the late filed Joinder containing additional objections filed 4/29/21 [Dk. 88].

Creditor Alex Llorente is required to provide notice of the continued hearing in compliance with all applicable rules and procedures regarding claim objections and motion practice. A proof of service must be filed by not later than May 28, 2021.

Appearances for the 5/5 hearing are excused.

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Party ]	INTARI	matian
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#### **Debtor(s):**

Todd Stuart Masler

Pro Se

5/4/2021 8:44:39 AM

Page 31 of 59

Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room 5C

11:00 AM

CONT... Todd Stuart Masler Chapter 7

**Trustee(s):** 

Weneta M.A. Kosmala (TR)

Represented By

Jeffrey I Golden

Ryan W Beall

### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

8:18-10969 Luminance Recovery Center, LLC

Chapter 7

Adv#: 8:19-01049 Marshack v. Richmond Capital Group

#10.00

Hearing RE: Motion For Entry Of Default Judgment Against Defendant Richmond Capital Group LLC Pursuant To Federal Rule Of Civil Procedure 55, As Incorporated By Federal Rule Of Bankruptcy Procedure 7055, And Local Bankruptcy Rule 7055-1 (Motion filed 2/24/2021) (Set per Order Entered 3/30/2021)

Docket 53

### **Tentative Ruling:**

Tentative for 5/5/21:

The Court has received and reviewed the Supplemental Brief And Status Report Re Motion For Default Judgment Against Defendant Richmond Capital Group And Motion To Excuse Compliance With March 30, 2021 Order filed by Plaintiff on 4/27/21 [Dk. 59] (the "Motion") and will GRANT the Motion.

The March 30, 2021 Order [Dk. 56] is modified as follows: Additional briefing in support of the motion for default judgment must be filed and served by no later than June 30, 2021. The hearing on the motion for default judgment is CONTINUED to July 14, 2021 at 11:00 a.m.

Plaintiff is to submit an order regarding the foregoing within 7 days.

With respect to Plaintiff's request regarding the potential withdrawal of the motion for default judgment, pursuant to applicable local rules, Plaintiff may withdraw a unilaterally filed motion at any time.

Appearances for the 5/5 hearing are excused.

#### **Party Information**

### Santa Ana

### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

**CONT...** Luminance Recovery Center, LLC

Chapter 7

**Debtor(s):** 

Luminance Recovery Center, LLC Represented By

Jeffrey I Golden Beth Gaschen

**Defendant(s):** 

Richmond Capital Group Pro Se

Movant(s):

Richard A. Marshack Represented By

Jeffrey I Golden Ryan W Beall Beth Gaschen Faye C Rasch

**Plaintiff(s):** 

Richard A. Marshack Represented By

Jeffrey I Golden Ryan W Beall Beth Gaschen Faye C Rasch

**Trustee(s):** 

Richard A Marshack (TR) Represented By

D Edward Hays
David Wood
Kyra E Andrassy
Jeffrey I Golden
Beth Gaschen
Matthew Grimshaw
M Douglas Flahaut

Annie Y Stoops
Judith E Marshack
Sharon Oh-Kubisch

Faye C Rasch Robert S Marticello

5/4/2021 8:44:39 AM Page 34 of 59

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room 5C

1:30 PM

CONT... Luminance Recovery Center, LLC Chapter 7

### Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

8:18-10969 Luminance Recovery Center, LLC

Chapter 7

Adv#: 8:19-01049 Marshack v. Richmond Capital Group

#10.10

CONT'D STATUS CONFERENCE Hearing RE:Complaint For: (1) Avoidance Of Preferential Transfers; (2) Recovery Of Property; (3) Preservation Of Avoided Transfers; (4) Disallowance Of Claims; (5) Turnover; (6) Predatory Lending; (7) Equitable Subordination Of Claims; and (8) Declaratory Relief [Holding Date]

(Complaint filed 3/20/19)
(PTC set at S/C held 9/18/19)
(S/C set at hrg. held 10/21/2020)
(Con't from 10:00 am, per order entered 12/23/20)

FR: 6-26-19; 8-7-19; 9-18-19; 5-13-20; 7-15-20; 9-30-20; 10-21-20; 1-20-21; 4-28-21

Docket 1

### **Tentative Ruling:**

Tentative for 5/5/21:

This matter is CONTINUED to July 14, 2021 at 11:00 a.m. to be heard concurrently with the motion on default judgment (see related tentative #10 above). A status report is due not later than 14 days in advance of the continued status conference.

Appearances for the 5/5 hearing are excused.

\*

Tentative for 4/28/21:

This matter is CONTINUED to May 5, 2021, at 1:30 p.m. to be heard concurrently with the hearing on Plaintiff's motion for default judgment.

The Court notes that a status report was not filed 14 days prior to the 4/28 hearing, despite the Court's instructions to do so (see prior tentative ruling

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

## **CONT...** Luminance Recovery Center, LLC

Chapter 7

below). Thus, Plaintiff has again failed to adhere to the requirements of LBR 7016-1, as well as this Court's instructions. Plaintiff is required to file a supplemental status report not later than April 30, 2021, or be subject to monetary and non-monetary sanctions at the 5/5 hearing for his failure to comply.

Appearances for the 4/28 hearing are excused.

\*

Tentative for 1/20/21:

This matter is CONTINUED to April 28, 2021, at 1:30 p.m. as a holding date. If this matter is not otherwise resolved, a status report (whether unilateral or joint) is due 14 days in advance.

Additionally, Plaintiff is required to file a motion for default judgment by not later than March 5, 2021.

The Court notes that a status report was filed on 1/14/21 [Dks. 48 and 50], despite the Court's instructions to file a status report not later than 14 days before the 1/20 hearing. See order entered 12/23/20 [Dk. 46]. Thus, Plaintiff has failed to adhere to the requirements of LBR 7016-1, as well as this Court's instructions. The Court will excuse the non-compliance in this instance, but future failure to comply may result in monetary or non-monetary sanctions, including dismissal for lack of prosecution.

The 1/20 hearing is hereby vacated, and will not be held; therefore, no appearances are permitted.

\*

Tentative for 9/30/20 is to DISMISS for failure to prosecute and failure to comply with applicable rules and instructions.

The Court previously continued this pre-trial conference from July 15, 2020 to September 30, 2020, directing Plaintiff to file any motion he deems appropriate, including a request for order to show cause why Defendant's answer should not be stricken, by no later than August 15, 2020. As of the

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

## **CONT...** Luminance Recovery Center, LLC

Chapter 7

posting of this tentative, the docket does not reflect any activity since the 7/15 hearing.

Additionally, the Court notes that a pre-trial stipulation has not been filed pursuant to the requirements of LBR 7016-1.

Virtual appearances are required.

\*

Tentative for 7/15/20 is to CONTINUE to September 30, 2020 at 11:00 a.m.

Plaintiff may file any motion he deems appropriate, including a request for order to show cause, by no later than August 15, 2020.

Appearances for the 7/15 hearing are excused.

\*

Tentative for 09/18/2019:

The Court is inclined to set the following dates/deadlines:

- 1. Discovery cutoff: February 17, 2020. Note: this is the date by which all discovery motions must be heard and resolved.
- 2. Motion cutoff: March 30, 2020. Note: this is the date by which all non-discovery motions must be heard and resolved.
- 3. Pretrial conference: May 13, 2020 at 1:30 p.m.

The parties are specifically advised to cooperate and follow all local and federal rules. The failure to do so may result in the imposition of monetary and non-monetary sanctions, including the striking of the answer and dismissal of the complaint.

Plaintiff is to lodge a scheduling order within seven (7) days.

Appearances required.

### **Party Information**

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

**CONT...** Luminance Recovery Center, LLC

Chapter 7

**Debtor(s):** 

Luminance Recovery Center, LLC Represented By

Jeffrey I Golden Beth Gaschen

**Defendant(s):** 

Richmond Capital Group Pro Se

**Plaintiff(s):** 

Richard A. Marshack Represented By

Jeffrey I Golden Ryan W Beall Beth Gaschen Faye C Rasch

**Trustee(s):** 

Richard A Marshack (TR)

Represented By

D Edward Hays
David Wood
Kyra E Andrassy
Jeffrey I Golden
Beth Gaschen
Matthew Grimshaw
M Douglas Flahaut
Annie Y Stoops
Judith E Marshack
Sharon Oh-Kubisch

Faye C Rasch

Robert S Marticello

### Santa Ana

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

8:18-13311 Ruby's Diner, Inc., a California corporation

Chapter 7

Adv#: 8:21-01014 Marshack v. Cavanaugh et al

#11.00

Hearing RE: Application For Right To Attach Order And For Issuance Of Writ Of Attachment As To Douglas Cavanaugh (Application filed 4/14/2021)

Docket 29

\*\*\* VACATED \*\*\* REASON: CONTINUED TO MAY 6, 2021 AT 10:00 A.M. IN COURTROOM 5A BEFORE HONORABLE ERITHE A. SMITH

### **Tentative Ruling:**

- NONE LISTED -

### **Party Information**

### **Debtor(s):**

Ruby's Diner, Inc., a California Represented By

William N Lobel Jeffrey P Nolan

**Defendant(s):** 

Douglas Cavanaugh Represented By

Leo A Bautista

Ralph Kosmides Represented By

Leo A Bautista

Beachcomber Management Crystal Pro Se

Lighthouse Cafe, LLC Pro Se

Beachcomber at Crystal Cove, LLC Pro Se

Shake Shack Crystal Cove, LLC Pro Se

**Plaintiff(s):** 

Richard A. Marshack Represented By

Christopher Dale Beatty

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room 5C

<u>1:30 PM</u>

CONT... Ruby's Diner, Inc., a California corporation Trustee(s): Chapter 7

Richard A Marshack (TR)

Represented By
Laila Masud
D Edward Hays
Tinho Mang

## Santa Ana

Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

8:18-13311 Ruby's Diner, Inc., a California corporation

Chapter 7

Adv#: 8:21-01014 Marshack v. Cavanaugh et al

#12.00

Hearing RE: Application For Right To Attach Order And For Issuance Of Writ Of Attachment As To Ralph Kosmides (Application filed 4/14/2021)

Docket 35

\*\*\* VACATED \*\*\* REASON: CONTINUED TO MAY 6, 2021 AT 10:00 A.M. IN COURTROOM 5A BEFORE HONORABLE ERITHE A. SMITH

## **Tentative Ruling:**

- NONE LISTED -

### **Party Information**

### **Debtor(s):**

Ruby's Diner, Inc., a California Represented By

William N Lobel Jeffrey P Nolan

**Defendant(s):** 

Douglas Cavanaugh Represented By

Leo A Bautista

Ralph Kosmides Represented By

Leo A Bautista

Beachcomber Management Crystal Pro Se

Lighthouse Cafe, LLC Pro Se

Beachcomber at Crystal Cove, LLC Pro Se

Shake Shack Crystal Cove, LLC Pro Se

**Plaintiff(s):** 

Richard A. Marshack Represented By

Christopher Dale Beatty

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

<u>1:30 PM</u>

**CONT...** Ruby's Diner, Inc., a California corporation

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
Laila Masud
D Edward Hays
Tinho Mang

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

8:19-13560 Eagan Avenatti, LLP

Chapter 7

Adv#: 8:20-01086 Marshack v. The X-Law Group, PC, a professional corporation et

#13.00

Hearing RE: Motion To Dismiss (Motion filed 3/18/2021)

Docket 165

## **Tentative Ruling:**

Tentative for 5/5/21:

Virtual appearances are required. The courtroom will be locked; parties will not be permitted to appear in the courtroom. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities.

Participants may connect to the videoconference through an Internet browser by entering the Videoconference URL shown below, as well as the meeting ID and password, when prompted.

Videoconference URL: https://cacb.zoomgov.com/j/1600726001

Meeting ID: 160 072 6001

Password: 124867

If a participant is unable to send and receive audio through his/her computer, or join the videoconference through an Internet browser for any reason, the audio of the hearing may be accessed by telephone using the following audio conference information:

Audioconference Tel. No.: +1 (669) 254 5252 or +1 (646) 828 7666

Meeting ID: 160 072 6001

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

CONT... Eagan Avenatti, LLP

Chapter 7

Password: 124867

For further details, please consult the instructions on the Court's website https://www.cacb.uscourts.gov/judges/honorable-scott-c-clarkson.

Please note that default matters may be called prior to the videoconference, so there may be a slight delay to the official start time of the videoconference hearing.

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#### **Party Information**

#### **Debtor(s)**:

Eagan Avenatti, LLP Represented By

Jack A. Reitman

**Defendant(s)**:

The X-Law Group, PC, a Represented By

Kurt Ramlo

Filippo Marchino

Filippo Marchino Represented By

Kurt Ramlo

Filippo Marchino

Elba Hernandez, individually and as Represented By

Filippo Marchino

Young Blue LLC, a limited liability Represented By

Filippo Marchino

Sandy Le, individually and on Represented By

Filippo Marchino

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room 5C

1:30 PM

CONT... Eagan Avenatti, LLP Chapter 7

Movant(s):

The X-Law Group, PC, a Represented By

Kurt Ramlo

Filippo Marchino

Filippo Marchino Represented By

Kurt Ramlo

Filippo Marchino

Elba Hernandez, individually and as Represented By

Filippo Marchino

**Plaintiff(s):** 

Richard A. Marshack Represented By

John P. Reitman D Edward Hays Richard L Kellner

Trustee(s):

Richard A Marshack (TR)

Represented By

Jack A. Reitman
D Edward Hays
David Wood
Judith E Marshack
John P. Reitman
Meghan C Murphey

Tinho Mang

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

8:19-13560 Eagan Avenatti, LLP

Chapter 7

Adv#: 8:20-01086 Marshack v. The X-Law Group, PC, a professional corporation et

#14.00

CONT'D RULE 16 STATUS CONFERENCE Hearing RE: Second Amended Complaint For:

- (1) Declaratory Judgment;
- (2) Quantum Meruit;
- (3) Violation Of The Automatic Stay, And Other Court Orders;
- (4) Avoidance, Recovery, And Preservation Of Fraudulent Transfer (Complaint filed 5/19/2020)

### [Case transferred from CB on 7/31/2020]

(Amended Complaint filed 10/26/2020)

(Rule 16 Pre-Trial Conference set per Order Entered 2/18/2021)

(Second Amended Complaint filed 2/25/2021)

(S/C set at PTC held 4/15/2021)

FR: 8-4-20; 9-3-20; 9-10-20; 10-7-20; 10-21-20; 10-21-20; 1-20-21; 4-7-21; 4-15-21

Docket 160

#### **Tentative Ruling:**

Tentative for 5/5/21:

Virtual appearances are required. The courtroom will be locked; parties will not be permitted to appear in the courtroom. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities.

Participants may connect to the videoconference through an Internet browser by entering the Videoconference URL shown below, as well as the meeting ID and password, when prompted.

Videoconference URL: https://cacb.zoomgov.com/j/1600726001

5/4/2021 8:44:39 AM

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

CONT... Eagan Avenatti, LLP

Chapter 7

Meeting ID:

160 072 6001

Password:

124867

If a participant is unable to send and receive audio through his/her computer, or join the videoconference through an Internet browser for any reason, the audio of the hearing may be accessed by telephone using the following audio conference information:

Audioconference Tel. No.: +1 (669) 254 5252 or +1 (646) 828 7666

Meeting ID: 160 072 6001

Password: 124867

For further details, please consult the instructions on the Court's website https://www.cacb.uscourts.gov/judges/honorable-scott-c-clarkson.

Please note that default matters may be called prior to the videoconference, so there may be a slight delay to the official start time of the videoconference hearing.

As noted in the Court's Zoom Video Hearing Guide, located at https://www.cacb.uscourts.gov/node/7890, all persons are strictly prohibited from making any recording of court proceedings, whether by video, audio, "screenshot," or otherwise. Violation of this prohibition may result in the imposition of monetary and non-monetary sanctions.

\*

Tentative for 4/15/21:

Virtual appearances are required.

## **Party Information**

#### **Debtor(s):**

Eagan Avenatti, LLP

Represented By Jack A. Reitman

5/4/2021 8:44:39 AM

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

1:30 PM
CONT... Eagan Avenatti, LLP
Chapter 7

**Defendant(s):** 

The X-Law Group, PC, a Represented By

Kurt Ramlo

Filippo Marchino

Filippo Marchino Represented By

Kurt Ramlo

Filippo Marchino

Elba Hernandez, individually and as Represented By

Filippo Marchino

Young Blue LLC, a limited liability Represented By

Filippo Marchino

Sandy Le, individually and on Represented By

Filippo Marchino

**Plaintiff(s):** 

Richard A. Marshack Represented By

John P. Reitman D Edward Hays Richard L Kellner

**Trustee(s):** 

Richard A Marshack (TR)

Represented By

Jack A. Reitman
D Edward Hays
David Wood
Judith E Marshack
John P. Reitman
Meghan C Murphey

Tinho Mang

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

**8:20-11056** Mershad Javan

Chapter 7

Adv#: 8:21-01010 Gubersky v. Javan

#15.00

Hearing RE: Motion To Dismiss Adversary Proceeding And "Complaint To Determine Dischargeability Of Debt 11 U.S.C. Sections 523(a)(6)" (Motion filed 3/19/2021)

Docket 5

\*\*\* VACATED \*\*\* REASON: ADVANCED TO MAY 5, 2021 AT 11:00 A.M. PER ORDER ADVANCING HEARINGS ON MOTION TO DISMISS AND STATUS CONFERENCE FROM 1:30 P.M. TO 11:00 A.M. ON MAY 5, 2021 ENTERED 4-28-2021 - (DOCKET NO. [11])

### **Tentative Ruling:**

- NONE LISTED -

<b>T</b>	r e 4•	
DONEST	Information	

**Debtor(s)**:

Mershad Javan Represented By

Leslie A Cohen

**Defendant(s):** 

Mershad Javan Represented By

Leslie A Cohen

**Movant(s):** 

Mershad Javan Represented By

Leslie A Cohen

Plaintiff(s):

James Gubersky Represented By

David Brian Lally

**Trustee(s):** 

Richard A Marshack (TR)

Represented By

D Edward Hays

5/4/2021 8:44:39 AM

Page 50 of 59

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021		Hearing Room	<b>5</b> C	
1:30 PM CONT	Mershad Javan	David Brian Lally	Cha	pter 7
		<u> </u>		
		Laila Masud		

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

**8:20-11056** Mershad Javan

Chapter 7

Adv#: 8:21-01010 Gubersky v. Javan

#16.00

STATUS CONFERENCE RE: Adversary Complaint To Determine Dischargeability Of Debt (Complaint filed 2/16/2021)

Docket 1

\*\*\* VACATED \*\*\* REASON: ADVANCED TO MAY 5, 2021 AT 11:00 A.M. PER ORDER ADVANCING HEARINGS ON MOTION TO DISMISS AND STATUS CONFERENCE FROM 1:30 P.M. TO 11:00 A.M. ON MAY 5, 2021 ENTERED 4-28-2021 - (DOCKET NO. [11])

## **Tentative Ruling:**

- NONE LISTED -

### **Party Information**

**Debtor(s)**:

Mershad Javan Represented By

Leslie A Cohen

**Defendant(s):** 

Mershad Javan Represented By

Leslie A Cohen

**Plaintiff(s):** 

James Gubersky Represented By

David Brian Lally

Trustee(s):

Richard A Marshack (TR)

Represented By

D Edward Hays David Brian Lally Laila Masud

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

8:20-12634 George J. Gehron, Jr.

Chapter 7

Adv#: 8:20-01179 Roberts v. Gehron Jr

#17.00

CONT'D STATUS CONFERENCE Hearing RE: Complaint To Determine Dischargeability Of Debt: (1) Debt For Defalcation While Acting In A Fiduciary Capacity (11 USC 523(a)(4)); and (2) Debt For Willful And Malicious Injury (11 USC 523(a)(6)) (Complaint filed 12/28/2020)

FR: 3-24-21

Docket 1

#### **Tentative Ruling:**

Tentative for 5/5/21:

Pursuant to the proposed tentative in related matter #18, the Court is inclined to set the following dates/deadlines:

- 1. Deadline to file Amended Complaint: June 10, 2021.
- 2. Continued Status Conference: August 4, 2021, at 11:00 a.m. A status report is due 14 days in advance.

Virtual appearances are required. The courtroom will be locked; parties will not be permitted to appear in the courtroom. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities.

Participants may connect to the videoconference through an Internet browser by entering the Videoconference URL shown below, as well as the meeting ID and password, when prompted.

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

CONT... George J. Gehron, Jr.

Chapter 7

Videoconference URL: https://cacb.zoomgov.com/j/1600726001

Meeting ID: 160 072 6001

Password: 124867

If a participant is unable to send and receive audio through his/her computer, or join the videoconference through an Internet browser for any reason, the audio of the hearing may be accessed by telephone using the following audio conference information:

Audioconference Tel. No.: +1 (669) 254 5252 or +1 (646) 828 7666

Meeting ID: 160 072 6001

Password: 124867

For further details, please consult the instructions on the Court's website https://www.cacb.uscourts.gov/judges/honorable-scott-c-clarkson.

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#### **Party Information**

**Debtor(s):** 

George J. Gehron Jr. Represented By

Christopher C Barsness

**Defendant(s):** 

George J Gehron Jr

Pro Se

5/4/2021 8:44:39 AM

Page 54 of 59

# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021 Hearing Room 5C

<u>1:30 PM</u>

CONT... George J. Gehron, Jr. Chapter 7

Plaintiff(s):

Gregg Roberts Pro Se

**Trustee(s):** 

Thomas H Casey (TR) Pro Se

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

8:20-12634 George J. Gehron, Jr.

Chapter 7

Adv#: 8:20-01179 Roberts v. Gehron Jr

#18.00

Hearing RE: First Amended Motion To Dismiss Adversary Complaint (Motion filed 3/15/2021) (First Amended Motion filed 4/7/2021)

Docket 12

### **Tentative Ruling:**

Tentative for 5/5/21 is to GRANT, and DISMISS without prejudice.

Plaintiff's complaint seeks a determination of dischargeability of debt arising from a state court judgment on the basis that the debt arose from "defalcation by one acting in a fiduciary capacity" pursuant to § 523(a)(4), and "willful and malicious injury" pursuant to § 523(a)(6).

Defendant has filed the present motion to dismiss, arguing that the complaint fails to allege sufficient facts pursuant to FRCP 12(b). Having reviewed the pleadings, the Court agrees.

To survive a FRCP 12(b)(6) motion to dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This standard requires the plaintiff to allege facts that add up to "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Id*.

Under §523(a)(4), Plaintiff must allege facts supporting the following three elements: (1) existence of an express or technical trust; (2) that the debt was caused by fraud or defalcation; and (3) that Defendant was a fiduciary to the creditor at the time the debt was created. *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997).

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

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**Hearing Room** 

**5**C

1:30 PM

## CONT... George J. Gehron, Jr.

Chapter 7

The fiduciary capacity referred to in §523(a)(4) does not include the "broad, general definition of fiduciary relationship -- a relationship involving competence, trust and good faith." *Ragsdale v. Haller*, 780 F.2d 794, 796 (9th Cir. 1986). Rather, the "concept of a fiduciary is to be narrowly defined." *Id*.

The complaint contains improper and conclusory statements that Defendant was a fiduciary, but fails to provide facts necessary for the Court to demonstrate the plausible existence of a trust, and whether the type of fiduciary relationship allegedly in existence between the parties is applicable to this cause of action.

Further, there are insufficient facts demonstrating that the debt was created by fraud or defalcation. Therefore, the complaint fails to properly allege sufficient facts to support the §523(a)(4) claim.

Under §523(a)(6), Plaintiff must allege facts supporting the following three elements: (1) Defendant's conduct was willful; (2) Defendant's conduct was malicious; and (3) Defendant caused injury. *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1143 (9th Cir. 2002).

To satisfy the willful injury requirement, Plaintiff must show either: Defendant had a subjective motive to inflict the injury or Defendant believed that injury was substantially certain to occur as a result of his conduct. *Id.*A "malicious injury" under §523(a)(6) involves: a wrongful act; done intentionally; which necessarily causes injury; and is done without just cause or excuse. "Maliciousness" may be implied from circumstances surrounding the debtor's conduct, even without proof that the debtor acted with spite, hatred or ill will toward the victim. *In re Ormsby*, 591 F.3d 1207 (9th Cir. 2010).

While the complaint contains conclusory statements of Defendant's willfulness and maliciousness, the complaint does not contain supporting factual allegations from which the Court may reasonably draw such a conclusion.

Therefore, the Court is inclined to GRANT the motion, and DISMISS the complaint without prejudice.

Virtual appearances are required. The courtroom will be locked; parties will

## Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

1:30 PM

## CONT... George J. Gehron, Jr.

Chapter 7

not be permitted to appear in the courtroom. The hearing will take place using Zoom for Government, a free service that provides audioconference and videoconference capabilities.

Participants may connect to the videoconference through an Internet browser by entering the Videoconference URL shown below, as well as the meeting ID and password, when prompted.

Videoconference URL: https://cacb.zoomgov.com/j/1600726001

Meeting ID: 160 072 6001

Password: 124867

If a participant is unable to send and receive audio through his/her computer, or join the videoconference through an Internet browser for any reason, the audio of the hearing may be accessed by telephone using the following audio conference information:

Audioconference Tel. No.: +1 (669) 254 5252 or +1 (646) 828 7666

Meeting ID: 160 072 6001

Password: 124867

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# Judge Scott Clarkson, Presiding Courtroom 5C Calendar

Wednesday, May 5, 2021

**Hearing Room** 

**5**C

<u>1:30 PM</u>

CONT... George J. Gehron, Jr.

Chapter 7

**Party Information** 

**Debtor(s):** 

George J. Gehron Jr. Represented By

Christopher C Barsness

**Defendant(s):** 

George J Gehron Jr Represented By

Christopher C Barsness

Movant(s):

George J Gehron Jr Represented By

Christopher C Barsness

**Plaintiff(s):** 

Gregg Roberts Pro Se

**Trustee(s):** 

Thomas H Casey (TR) Pro Se